

USDS SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: <u>9-7-11</u>
--

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
IN RE BANK OF AMERICA CORP.  
SECURITIES, DERIVATIVE, AND  
EMPLOYEE RETIREMENT INCOME  
SECURITY ACT (ERISA) LITIGATION

: Master File No. 09 MD 2058 (PKC)

: **CIVIL CASE MANAGEMENT PLAN**  
: **AND SCHEDULING ORDER**

THIS DOCUMENT RELATES TO:  
THE CONSOLIDATED SECURITIES ACTION  
-----X

This Civil Case Management Plan (the "Plan") is submitted by the parties in accordance with Rule 26(f)(3), Fed. R. Civ. P., the Court's July 29, 2011 Scheduling Order [Docket No. 406], and the Court's August 30, 2011 Order [Docket No. 424]. *and is adopted by the Court as modified.*

1. The parties do not consent to conducting all further proceedings before a Magistrate Judge, including motions and trial. 28 U.S.C. § 636(c).
2. The Consolidated Securities Action is to be tried to a jury.
3. As set forth in the Court's July 29, 2011 Scheduling Order, class certification discovery shall be completed by October 3, 2011, with the exception of depositions, if necessary, of any expert(s) in connection with class certification (as set forth below).
  - a. The parties identified the experts that they will be using in connection with class certification and the subjects of their testimony on August 12, 2011. Any rebuttal experts in connection with class certification and the subjects of their testimony shall be identified by August 19, 2011. Lead Plaintiffs shall serve expert report(s) in support of class certification on August 29, 2011. Defendants shall serve any expert report(s) in opposition to class certification by September 16, 2011. Lead Plaintiffs shall serve any rebuttal expert report(s) in support of class certification by September 26, 2011.
  - b. Any depositions of the parties' expert(s) in connection with class certification shall occur between October 3, 2011 and October 14, 2011.
4. As set forth in the Court's July 29, 2011 Scheduling Order, the motion for class certification shall be filed by October 17, 2011. Any opposition papers shall be filed no later than October 31, 2011, and any reply no later than November 7, 2011.
5. As set forth in the Court's July 29, 2011 Scheduling Order, fact discovery shall be completed by March 30, 2012.

*and such other number  
merits deposition as the  
Court determines.*

6. As set forth in the Court's August 30, 2011 Order, expert discovery shall be completed by May 18, 2012.

a. The party bearing the burden of proof as to any issue with respect to which it intends to submit an expert report shall identify its experts and the subjects of their testimony by January 23, 2012. The opposing party shall identify its experts by February 3, 2012. Any rebuttal experts shall be identified by February 15, 2012. Expert report(s) of the party with the burden of proof shall be served by March 16, 2012. The opposing party's expert report(s) shall be served by April 6, 2012. Rebuttal expert report(s) of the party with the burden of proof shall be served by April 27, 2012. Any deposition of the parties' experts shall occur by May 18, 2012.

7. The parties are to conduct discovery in accordance with the Federal Rules of Civil Procedure and the Local Rules of the Southern District of New York.

a. Pursuant to agreement by the parties, Lead Plaintiffs' initial requests for the production of documents were served on December 29, 2010. Defendants' initial requests for the production of documents in the Consolidated Securities Action were served on March 24, 2011.

b. Any requests for the production of documents, requests for admissions, or interrogatories shall be served by no later than February 29, 2012.

*PKC* c. *Plaintiffs may* <sup>(38)</sup> ~~The parties are each permitted to take up to [1] depositions per side, excluding expert discovery.~~ *Defendants may take up to 15 class certification depositions.*

d. To facilitate scheduling and for the convenience of witnesses, the parties will endeavor to serve deposition notices at least three weeks before the date on which the party wishes to take the deposition. The parties will use best efforts to coordinate with counsel for the witness regarding scheduling of the deposition at a time mutually convenient to the parties and the witness.

e. Absent agreement by the parties or Court order, a deposition of a witness not under a party's control is limited to one day of seven hours in accordance with Rule 30(d)(1) of the Federal Rules of Civil Procedure.

*PKC* 8. All motions and applications shall be governed by the Court's Individual Practices, including pre-motion conference requirements, except that the following motions may be made without a pre-motion conference: (a) motion for class certification on the schedule set forth in paragraph 4; ~~and~~ (b) motions in limine on the schedule set forth in paragraph 12. *and (c) motion by defendants for summary judgment on the schedule set forth in paragraph 18.*

*PKC* 9. ~~Pursuant to the authority of Rule 16(c)(2), Fed. R. Civ. P., any motion for summary judgment will be deemed untimely unless a request for a pre-motion conference relating thereto is made in writing within fourteen (14) days of the close of all discovery. The~~

Court shall hold a conference to address any such motions to be made and the scheduling of such motions.

10. All counsel must meet face-to-face for at least one hour to discuss settlement within fourteen (14) days following the close of discovery.
11. Counsel for Lead Plaintiffs and Defendants have retained a private mediator and are engaged in the mediation process.
12. The Final Pretrial Submission Date is thirty (30) days following the close of all discovery. By the Final Pretrial Submission Date, the parties shall submit a Joint Pretrial Order prepared in accordance with the undersigned's Individual Practices and Rule 26(a)(3), Fed. R. Civ. P. Any motions in limine shall be filed after the close of discovery and before the Final Pretrial Submission Date and the pre-motion conference requirement is waived for any such motion. Proposed voir dire, jury instructions and verdict form shall also be filed by the Final Pretrial Submission Date. Counsel are required to meet and confer on a joint submission of proposed jury instructions and verdict form, noting any points of disagreement in the joint submission. Jury instructions may not be submitted after the Final Pretrial Submission Date, unless they meet the standard of Rule 51(a)(2)(A), Fed. R. Civ. P. Counsel for the parties have conferred and their present best estimate of the length of the trial in the Consolidated Securities Action is four (4) weeks.
13. No initial disclosures will be served in the Consolidated Securities Action.
14. The procedures outlined herein regarding expert discovery and proceedings following the close of discovery shall not apply to the Individual Actions or the Bahnmaier Action. The parties to the Individual Actions shall meet and confer to discuss a proposed case management order regarding expert discovery, any unique facts and the proceedings following the close of discovery in those cases.
15. The parties <sup>are</sup> ~~request that they be~~ permitted to serve up to thirty (30) interrogatories per side. *Interrogatories are governed by Local Civil Rule 33.3*

.....

**TO BE COMPLETED BY THE COURT:**

The Plan has been reviewed by the Court and, except as modified, is adopted as the Scheduling Order of this Court in accordance with Rule 16(b), Fed. R. Civ. P.

16. ~~[Other]~~ Requests to Admit shall be limited to 30 per side.
17. The next Case Management Conference is scheduled for January 5, 2012 at 2 p.m.
18. Pretrial conference waived for any summary judgment motion filed by defendants after the close of fact discovery provided it is filed no later than June 3, 2012. Response by plaintiffs due June 24, 2012. Any reply due by July 8, 2012.
19. The Final Pretrial Conference will be held on October 12, 2012 at 2 P.<sup>14</sup><sup>Final</sup> ~~Joint Pretrial Order~~ Pretrial submissions consisting of Voir Dire Requests, Requests to Charge, Verdict Form and fully submitted in limine motions are due September 21, 2012.

This ORDER may not be modified or the dates herein extended, except by further Order of this Court for good cause shown. Any application to modify or extend the dates herein (except as otherwise stated) shall be made in a written application in accordance with paragraph 1(C) of the Court's Individual Practices and shall be made no less than five (5) days prior to the expiration of the date sought to be extended.



---

P. Kevin Castel  
United States District Judge

Dated: September 7, 2011  
New York, New York